

Nationwide Permit for Residential, Commercial, and Institutional Developments (NWP 39)

Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this Nationwide permit (NWP).

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, Government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

- a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;
 - b. The discharge does not cause the loss of greater than 300 linear feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer (DE), as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
 - c. The permittee must notify the DE in accordance with General Condition 13, if any of the following criteria are met:
 - (1) The discharge causes the loss of greater than 1/10 acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or
 - (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or
 - (3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the DE must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;
 - d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
 - e. The discharge is part of a single and complete project;
 - f. The permittee must avoid and minimize discharges into waters of the U.S. at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the U.S. were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the U.S. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the U.S. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration;
 - g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the U.S. exceeding 1/10 acre requires that the permittee notify the DE in accordance with General Condition 13;
 - h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);
 - i. For discharges causing the loss of 1/10 acre or less of waters of the U.S., the permittee must submit a report, within 30 days of completion of the work, to the DE that contains the following information:
 - (1) The name, address, and telephone number of the permittee;
 - (2) The location of the work;
 - (3) A description of the work;
 - (4) The type and acreage of the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands); and
 - (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands created on-site);
 - j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.
- Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (i) of this NWP will

be determined on a case-by-case basis by the DE for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the U.S. to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities. This is more than the acreage limit for NWP 39 impacts to waters of the U.S. (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed ½ acre, see General Condition 15).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of U.S. authorized by NWP 39 can not exceed ½ acre. This includes any loss of waters associated with development of individual subdivision lots.

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the U.S. based on this criterion would require a Pre-construction Notification (PCN) although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs).

This NWP is authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This NWP (33 CFR 330) became effective March 18, 2002, following publication in the Federal Register.

General Conditions: The following general conditions must be followed for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low flow or no flow.
4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions.
5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)). Additionally, any case specific conditions added by the U.S. Army Corps of Engineers (Corps) or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service (USFWS)).
8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. Water Quality.
 - a. In certain states and tribal lands, an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).
10. Coastal Zone Management. Not Applicable.
11. Endangered Species.
 - a. No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the USFWS or National Marine Fisheries Service (NMFS), the DE may add species-specific regional endangered species conditions to the NWPs.
 - b. Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental

take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html> and http://www.nfms.gov/prot_res/esahome.html respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification.

a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the DE with a PCN as early as possible. The DE must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the DE will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the DE. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the DE that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the DE's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b. Contents of Notification. The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWP 39, the PCN must also include a written statement to the DE explaining how avoidance and minimization for losses of waters of the U.S. were achieved on the project site;

(5) For NWP 39, the PCN must include a compensatory mitigation proposal to offset losses of waters of the U.S. or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the DE must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(6) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(7) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

c. Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

d. DE's Decision: In reviewing the PCN for the proposed activity, the DE will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The DE will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the DE determines that the

activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the DE will notify the permittee and include any conditions the DE deems necessary. The DE must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the DE will expeditiously review the proposed compensatory mitigation plan. The DE must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the DE to be minimal, the DE will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the DE determines that the adverse effects of the proposed work are more than minimal, then the DE will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the DE determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the U.S. will occur until the DE has approved a specific mitigation plan.

e. Agency Coordination: The DE will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the DE that result in the loss of greater than 1/2 acre of waters of the U.S., the DE will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, Environmental Protection Agency, State Historic Preservation Officer, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the DE notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional 15 calendar days before making a decision on the notification. The DE will fully consider agency comments received within the specified timeframe, but will provide no response to the resource agency, except as provided below. The DE will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the DE will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

f. Wetland Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29, see paragraph (b)(9)(iii) for parcels less than (1/4 acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions; and
- c. The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the U.S. for the total project cannot exceed 1/3 acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

19. Mitigation. The DE will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

a. The project must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the DE determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the DE will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

d. Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4 acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2 acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

e. To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the DEs may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the DE may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

g. Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

h. Permittees may propose the use of mitigation banks, in-lieu fee arrangements, or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or

impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S. or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding National resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the DE after notice and opportunity for public comment. The DE may also designate additional critical resource waters after notice and opportunity for comment.

Except as noted below, discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 39, for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the U.S. may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally-listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

26. Fills Within 100-Year Flood Plains. For purposes of this General Condition, 100-year flood plains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local flood plain maps.

a. Discharges in Flood Plain; Below Headwaters. Discharges of dredged or fill material into waters of the U.S. within the mapped 100-year flood plain, below headwaters (i.e., 5 cubic feet per second), resulting in permanent above-grade fills, are not authorized by NWP 39.

b. Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the U.S. within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39.

c. The permittee must comply with any applicable FEMA-approved state or local flood plain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12 months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least 1 month before the previously approved completion date.

D. Further Information

1. The DEs have authority to determine if an activity complies with the terms and conditions of an NWP.
2. The NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. The NWPs do not grant any property rights or exclusive privileges.
4. The NWPs do not authorize any injury to the property or rights of others.
5. The NWPs do not authorize interference with any existing or proposed Federal project.

For additional information concerning the NWP, please contact the Regulatory Branch, Tulsa District, U.S. Army Corps of Engineers, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, or telephone 918-669-7400.

**Section 401 Clean Water Act (CWA) Water Quality Certification (WQC)
For Nationwide Permits (NWP) Under Section 404 CWA In Oklahoma**
May 29, 2002

The Oklahoma Department of Environmental Quality (DEQ) grants WQC pursuant to Section 401 CWA for activities authorized under NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, and 44, at locations outside the watersheds of Outstanding Resource Waters (ORWs), subject to the following special conditions:

1. All spills of fuel or other pollutants in excess of five gallons shall be reported to the DEQ, within twenty-four (24) hours, to the pollution prevention hotline at 1-800-522-0206.
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM).
3. Permittee shall provide access to the property for DEQ inspection purposes.
4. Any material and fuels used in the project shall be stored and/or stockpiled above the Ordinary High Water Mark (OHWM) and shall be removed from a likely flood zone prior to any predicted flood.
5. If a stormwater discharge permit for construction activities is required, one can be obtained from the DEQ at 405-702-8100.

Denial of Water Quality Certification: For NWPs 16 and 34, Section 401 WQC is denied within Oklahoma.

Denial of Water Quality Certification for Activities Located within the Watersheds of ORWs: For NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 36, 39, 40, 41, 42, 43, and 44, Section 401 WQC is denied for all activities in the watersheds of ORWs. This WQC denial does not apply to NWPs 20, 37, and 38 which are certified by the above conditions statewide. ORWs are designated in Oklahoma's Water Quality Standards (OWQSS), Oklahoma Administrative Code Title 785, Chapter 45 Appendix A, as follows (including tributaries):

- (1) Flint Creek tributaries in Adair County,
- (2) Illinois River in Cherokee, Adair, and Delaware Counties,
- (3) Barren (Baron) Fork River in Cherokee and Adair Counties,
- (4) Mountain Fork River -Upstream of the 600 feet above mean sea level (' msl) elevation (Broken Bow Reservoir) in McCurtain and LeFlore Counties,
- (5) Big Lee Creek -Above 420 feet above mean sea level (' msl) elevation in Sequoyah County,
- (6) Little Lee Creek in Adair and Sequoyah Counties.

This WQC supercedes all previous WQCs for NWPs in the state of Oklahoma.

PERMITTEE COMPLIANCE CERTIFICATION

Upon completion of the activity authorized by this permit and any mitigation required by this permit, sign and complete this certification form and return it to the address on the reverse side within 30 days of completion of the work.

PERMIT NO.:

PERMITTEE NAME:

DATE OF ISSUANCE:

------(fold here so that address shows on outside)-----

(Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.)

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

SIGNATURE OF PERMITTEE

DATE

DATE WORK COMPLETED: _____

------(fold here and tape closed)-----

(FOR AGENCY USE ONLY - DO NOT WRITE BELOW THIS LINE)

PROJECT MANAGER:

RECEIVED IN CESWT-PE-R: _____

INSPECTION NEEDED: Y / N

FINAL INSPECTION SCHEDULED: _____

PERMITTEE CONSTRUCTION SCHEDULE WORKSHEET

* MAIL TO ADDRESS ON REVERSE WITHIN 30 DAYS OF "DATE OF ISSUANCE"

PERMIT NO.:

PERMITTEE NAME:

DATE OF ISSUANCE:

------(fold here so that address shows on outside)-----

Please provide the following information:

Anticipated/Known Construction Start Date: _____

Anticipated Completion Date: _____

I have read and understand the obligations and requirements of this authorization.

SIGNATURE OF PERMITTEE

DATE

------(fold here and tape closed)-----

(FOR AGENCY USE ONLY - DO NOT WRITE BELOW THIS LINE)

PROJECT MANAGER:

RECEIVED IN CESWT-PE-R: _____

INSPECTION NEEDED: Y / N

CONSTRUCTION INSPECTION SCHEDULED: _____

FINAL INSPECTION SCHEDULED: _____

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant:	File Number:	Date:
Attached is:		See Section below A,B,C, Not Applicable
APPROVED JURISDICTIONAL DETERMINATION		D
PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> or Corps regulations at 33 CFR Part 331.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: Regulatory Branch Telephone 918-669-7400	If you only have questions regarding the appeal process you may also contact: Mr. James Gilmore Appeals Review Officer (CESWD-ETO-R) U.S. Army Corps of Engineers 1100 Commerce Street, Room 8E9 Dallas, TX 75242-0216 Telephone 214-767-2457
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RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or authorized agent.	Date:	Telephone number:
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